IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ferree

Serial No.: 10/679,667 Group No.: 3732

Filed: Oct. 6, 2003 Examiner: A. Reimers

For: MULTIAXIAL ARTIFICIAL DISC REPLACEMENTS

RESPONSE TO OFFICE ACTION

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed December 13, 2004, the claims of this application are being resubmitted in unamended form on the grounds that the Examiner has apparently misinterpreted the cited prior art, namely U.S. Patent No. 6,231,609.

The '609 patent teaches, in essence, a threaded fusion cage having a resilient portion. This is perhaps best illustrated in Figure 2, which includes an upper rigid portion 11, a lower rigid portion 12, and a resilient intermediate portion which, in the case of Figure 2, includes coil springs 19. Thus, the devices are threaded into place, as with conventional cages, but must be placed in the correct orientation to ensure that the layers 11, 12 and 13 are directly above one another to provide the appropriate cushioning effect. This is possible because of the slot 21 in the back of the device.

The drawings to which the Examiner refers, namely, Figures 9 and 10, are simply a variation on the same design using leaf springs as opposed to coil springs. In other words, once again, there are rigid portions 11 and 12 sandwiching a resilient section 13 which utilizes cross springs 56, 58. Depicted generally as 54 in Figure 10. But the overall action is the same, namely, that a cushioning effect is achieved once the cage is screwed into position.

Turning to the rejection, based upon the teachings of the prior art, it is submitted that the '609 patent does not disclose or suggest "an element that allows movement between the lower and upper components along two separate, independent axes." The Examiner argues that the '609 patent teaches "a cruciate-shaped axle element that allows movement between the lower and upper components along

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two separate, independent axes," referring to parts 56-59 of the cross spring assembly 54 of Figures 9 and 10. Applicant respectfully disagrees. The two axes are not orthogonal to one another. Rather, the axes of the springs elements are non-orthogonal, and there is no "axle assembly" of any kind taught or suggested. Anticipation may be established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Systems, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation requires the presence of all elements of a claimed invention as arranged in the claim, such that a disclosure "that 'almost' meets that standard does not 'anticipate'." Connell v. Sears, Roebuck Co., 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983).

In the subject case, given that the '609 patent does not disclose each and every element of Applicant's invention as claimed, anticipation is not possible.

Drawings

Replacement drawing sheets for Figures 1-10 are attached hereto.

Questions regarding this application may be directed to the undersigned attorney by telephone, facsimile or electronic mail.

Respectfully submitted,

By: _____

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